

TITLE 16. CALIFORNIA STATE BOARD OF OPTOMETRY

NOTICE IS HEREBY GIVEN that the California State Board of Optometry (hereafter "Board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

**Department of Consumer Affairs
2420 Del Paso Road, Yosemite Room
Sacramento, California 95834
Monday, April 15, 2013
10:00 a.m.**

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on Monday, April 15, 2013, or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 3025, 3044, 3075, 3152, and 3152.5 of the Business and Professions Code, and to implement, interpret or make specific Sections 3075, 3078, 3151, 3151.1, 3152, and 3152.5 of said Code, the Board is considering changes to Division 15 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

Informative Digest:

The Board currently regulates about 8,000 licensees. The Board's highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions. The primary methods by which the Board achieves this goal are: issuing licenses to eligible applicants, investigating complaints against licensees, and disciplining licensees for violating the Optometry Practice Act.

Business and Profession Code (BPC) section 3025 authorizes the Board to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable the Board to carry into effect the provisions of the Optometry Practice Act.

The primary purpose of this proposal is to implement, and make specific the fees established by Senate Bill 1215 (Emmerson, Chapter 359, Statutes of 2012), specifically BPC sections 3151, 3151.1, and 3152. BPC section 3151 creates a retired license status for optometrists, and BPC section 3151.1 creates a retired license status with volunteer designation. BPC section 3152 establishes fee ranges for these retired licenses, and the range for the renewal fee for the retired license with volunteer designation.

Policy Statement Overview/Anticipated Benefits of Proposal:

The fee implementation, established by SB 1215 through these proposed regulations will permit the Board to issue the retired license, and retired license with volunteer designation statuses. Without an established fee, the Board cannot issue the retired licenses.

Previously, when licensed optometrists retired from practice, they could either be placed on inactive status or allow their license to expire. By requesting to be placed on inactive status, licensees had to pay a biennial fee of \$425 and were not permitted to practice in California. In addition, they were exempt from complying with continuing education requirements. If optometrists allowed their license to expire, they would pay no fee to the Board, and their license would go into delinquent status and be cancelled after three years.

There were two major complaints among licensees regarding the license status options available to them upon retirement. First, renewing under inactive status requires licensees to pay the renewal fee every two years when they have no intention of ever practicing again. Secondly, if licensees choose not to pay the fees and have their license expire, they are considered delinquent until the license is cancelled after three years. Delinquency implies that the licensee is non-compliant with Board requirements, such as past due fees or not fulfilling the continuing education requirements. It is unacceptable that licensees should be given a delinquent status and have their reputations tarnished when they simply are retired.

Licensed optometrists also requested that the Board create a retired license with volunteer designation. This would permit retired optometrists to provide optometric services without compensation at health fairs, vision screenings, and public service eye programs. Many charitable organizations need volunteer optometrists on a temporary or permanent basis, and this license status would make it easier for these organizations to obtain these services. Moreover, simplifying the process of obtaining a retired license with volunteer designation will encourage retired optometrists to volunteer, increasing access to care for many underserved communities.

Consistency and Compatibility with Existing State Regulations:

The Board has evaluated this regulatory proposal, and it is not inconsistent or incompatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: Currently, there are 781 optometrists that are at retirement age. The Board estimates that 25% (about 195) of these optometrists will choose to retire at some point, but it is unknown when. The same estimate applies to optometrists that choose to retire with a volunteer designation. The Board does not anticipate a large number of optometrists suddenly retiring because this option is available. An optometrist's average retirement age is 70 years old.

In order for the Board to absorb the workload associated with processing the requests for these retired licenses and to renew the retired license with volunteer designation, the Board will need to charge a non-refundable processing fee of \$25 for the retired license, \$50 for the retired license with a volunteer designation, and \$50 for the renewal of a retired license with a volunteer designation. This fee will offset the costs associated with staff's processing of the

requests. For licensees who are in a delinquent status (total of 417 at retirement age) that are seeking to retire or retire with volunteer designation, there will be additional delinquency fees that must be paid prior to the issuance of the retired licenses. BPC sections 3151 and 3151.1 require that licensees applying for these licenses hold a current and active optometrist license to apply. These fees are calculated on a case-by-case basis and may go up to \$3,000 once all delinquency and outstanding renewal fees have been calculated pursuant to BPC section 3146-3147.7.

The Board will experience a possible loss in revenue because optometrists that once kept their license active or inactive for \$425 biennially, who considered themselves retired, can now legally retire and pay a one-time fee of \$25, or \$50 biennially to be a retired volunteer. If 25% of optometrists at retirement age retire or retire with volunteer designation, the potential revenue loss would be \$37,000 to \$41,000 per year for each license status. This is over a span of 20 years.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination:

These proposed regulations will provide the Board with the means to implement, and make specific BPC sections 3151, 3151.1, and 3152, as they pertain to licensed optometrists interested in retiring, or retiring with volunteer designation.

An optometrist retires because he or she chooses to retire. If the optometrist owns a business, it may either be sold, or closed. If the optometrist works for a business, they will leave that place of employment, and it is the employer's responsibility to hire a replacement. While a high level of experience and knowledge is lost when an optometrist retires, it is necessary and opens up new opportunities to the incoming workforce and businesses. It is also important to note that prior to SB 1215 and the creation of the retired license status for this profession, optometrists have been considering themselves retired and taking the above steps. The only difference is that in the past, instead of having a retired designation, they were active, inactive or delinquent.

Cost Impact on Representative Private Person or Business:

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Board are:

- All optometrists who chose to retire will incur the Board's non-refundable processing fee of \$25 for the retired license, \$50 for the retired license with a volunteer designation, and

\$50 for the renewal of a retired license with a volunteer designation.

- For licensees who are in a delinquent status (total of 417 at retirement age) that are seeking to retire or retire with a volunteer designation, there will be additional delinquency fees that must be paid prior to the issuance of the retired licenses. BPC sections 3151 and 3151.1 require that licensees applying for these licenses hold a current and active optometrist license to apply. These fees are calculated on a case-by-case basis and may go up to \$3,000 once all delinquency and outstanding renewal fees have been calculated pursuant to BPC section 3146-3147.7.
- If the optometrist owns a business, when it is sold, he or she will make a profit that can be used for retirement. The optometrist may incur a cost when transferring records to another practitioner and/or storing records in compliance with the law.
- If the optometrist is an employee, when he or she retires, their employer will be responsible for filling the vacant position.
- An employee of a business sold or closed by a retiring optometrist may lose their job.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. This proposal only establishes the fees needed to implement the Board's retired licenses created pursuant to SB 1215. Prior to the passage of this legislation, optometrists were considering themselves retired and taking the steps necessary to sell or close their businesses, if they owned one. The only difference is that in the past, instead of having a retired designation, they were active, inactive or delinquent.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

This proposal impacts licensed optometrists at retirement age who are interested in becoming legally retired, or retiring with volunteer designation. That in turn may result in retiring optometrists selling or closing their business, which may result in their employees losing their jobs. If the business is sold to another optometrist or another industry, it could be considered a new opportunity for the new workforce. The reverse would occur if nobody is able to buy the business. If there is an increase in retired volunteer optometrists, charitable organizations that host health fairs, visions screenings, and public eye service programs may expand due to this new resource of volunteers.

Benefits of Regulation:

The Board has determined that this regulatory proposal will have the following benefits to health

and welfare of California residents, worker safety, and state's environment:

- This regulatory proposal benefits the health and welfare of California residents, specifically uninsured or under-insured individuals. Retired optometrists who decide to obtain the volunteer designation will be able to provide free services at health fairs, visions screenings, and public eye service programs.
- This regulatory proposal does not affect worker safety because the focus of this regulation is to establish appropriate fees so that optometrists can retire pursuant to BPC sections 3151 and 3151.1.
- This regulatory proposal does not affect the state's environment because the focus of this regulation is to establish appropriate fees, so that optometrists can retire pursuant to BPC sections 3151 and 3151.1.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board at 2450 Del Paso Road, Suite 105, Sacramento, California 95834.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Andrea Leiva, Policy Analyst
Address: 2450 Del Paso Road, Suite 105
Sacramento, CA 95834
Telephone No.: 916-575-7182
Fax No.: 916-575-7292
E-Mail Address: andrea.leiva@dca.ca.gov

The backup contact person is:

Name: Mona Maggio, Executive Officer
Address: 2450 Del Paso Road, Suite 105
Sacramento, CA 95834
Telephone No.: 916-575-7176
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E-Mail Address: mona.maggio@dca.ca.gov

Website Access: Materials regarding this proposal can be found at
<http://www.optometry.ca.gov/lawsregs/propregs.shtml>.